

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	
)	
v.)	Case No. 22-00120-CR-W-HFS
)	
DION ROSE)	
)	
Defendant.)	

ORDER

Defendant seeks dismissal on Second Amendment grounds of his felon in possession prosecution, contending that his non-violent drug offense cannot justify a firearm prohibition. A Report and Recommendation favors denial of the motion because the Eighth Circuit currently supports the prohibition. Defendant's objections acknowledge that status but note that the Circuit decision may be reheard and seeks to preserve the issue.

I will deny the motion, based on United States v. Jackson, 69 F.4th 495 (8th Cir. 2023). Moreover, I note agreement with the Jackson opinion and with the similarly reasoned dissent of Judge Wood in Atkinson v. Garland, 70 F.4th 1018 (7th Cir. 2023). The majority opinion in Atkinson, requiring an in-depth historical study by the district court instead of a general ruling on classification (as in the felon in possession prohibition) would be enormously wasteful and inconclusive, likely to result in nationwide judicial conflict that would either remain unresolved or would require continuous Supreme Court intervention. This would be contrary to the expectation in District of Columbia v. Heller, 554 U.S. 570, 580 (2008), and not required by the holding in New York Rifle & Pistol Association, Inc. v. Bruen, 142 S.Ct. 2111 (2022).

While I recognize the appeal of allowing peaceful tax evaders and others similarly situated to possess firearms, on reflection it seems the solution is appropriately legislative rather than judicial. Congress started to do this in 1968, as Judge Colloton points out in Jackson, 69 F.4th at 504, in the Safe Streets Act and the Gun Control Act of 1968. The Report and Recommendation (doc. 29) is therefore ADOPTED and the motion to dismiss (doc. 20) is DENIED.

/s/ Howard F. Sachs

HOWARD F. SACHS
UNITED STATES DISTRICT JUDGE

Dated: August 16, 2023
Kansas City, Missouri